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BULLETIN

No. 91-6

August 15, 1991

Subject: United States Longshoremen's and Harbor Workers' Compensation Act Coverage

We have received several inquiries asking whether Washington's policy form and rate filing laws apply to United States Longshoremen's and Harbor Workers' Coverage (USL&H). The simple answer to these inquiries is: yes, they do.

Workers' compensation coverage for most Washington workers is provided either through a policy issued by the State of Washington Industrial Insurance Fund, administered by the Department of Labor and Industries, or directly by an employer who is a qualified self-insurer. The Insurance Commissioner does not regulate the activities of either the fund or qualified self-insurers.

However, the Industrial Insurance Fund does not provide coverage for those workers engaged in maritime employment. Workers' compensation coverage for these occupations is mandated by the Federal Longshoremen's and Harbor Workers' Compensation Act (33 USCA, sections 901-950). This coverage may be provided by private insurers or directly by an employer who is a qualified self insurer. Although the coverage and benefits are mandated by federal law and may not be changed by state law, there is no preemption of other provisions of the Washington Insurance Code when USL&H insurance is provided by private insurers.

Workers' compensation coverage in Washington is treated as "general casualty insurance," defined in part by RCW 48.11.070(3) as all "...obligations accepted by, imposed upon, or assumed by employers under law for workers' compensation." The statute makes no distinction between federal or state law; it merely requires that the obligation be required "under law." USL&H coverage is workers' compensation insurance required under federal law, and is therefore general casualty insurance in Washington.

RCW 48.18.100 requires that all insurance policy forms be filed with and approved by the commissioner prior to use. The only exceptions are surety bond forms, forms issued for coverages falling under the definition of ocean marine and foreign trade insurance (see RCW 48.18.010 and RCW 48.11.050), and forms written on risks of unique character. This statute clearly requires that general casualty forms, including USL&H forms, must be filed and approved prior to use.

Likewise, RCW 48.19.040 requires that insurance rates and rating plans be filed with and approved by the commissioner prior to use. There are exceptions to this requirement (see RCW 48.19.010), but they do not apply to workers' compensation insurance.

We recognize that this application of Washington law may differ from interpretations made previously by some individuals within the department. If so, such previously expressed interpretations were in error, and are hereby repudiated.

It is apparent that many insurers offering this essential coverage have not made the appropriate rate and form filings. These violations of Washington law must be rectified. We realize that in many instances insurers may not be able to immediately make the appropriate filings. Therefore, we will not take any punitive action against an insurer who has not made an acceptable filing of USL&H forms and rates until after January 1, 1992. We encourage companies to make these filings as soon as possible to allow sufficient time for our review.

Questions regarding what must be filed or the filing process should be directed to Allen Morrow, Senior Rate Analyst. Mr. Morrow may be reached at (206) 753-5396.

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